Ontario

A Guide to Developing Procurement Bylaws

Meeting the requirements of the
Municipal Act, 2001

July 2003

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This is a guide, not a directive. The guide outlines the steps that can be taken to develop bylaws/resolutions for procuring goods and services. ***The guide does not provide directions on how to procure goods and services.*** Since the guide is advisory in nature, it should not be relied on as a substitute for legal or professional advice. The Ministry of Municipal Affairs and Housing is not liable for any damages that may result as a result of the municipality or local board relying on the information presented in the guide. A municipal/local board solicitor should be consulted before passing a procurement bylaw/resolution.

THE LEGISLATION AND GUIDE AT A GLANCE

How to Ensure Compliance with Procurement Requirements of Section 271 of the *Municipal Act, 2001*, S.O. 2001, Chapter 25 (the Act)

What are the requirements for the procurement policies?

Before January 1, 2005, a municipality and a local board shall adopt policies with respect to its procurement of goods and services, including policies with respect to,

(a) the types of procurement processes that shall be used;
(b) the goals to be achieved by using each type of procurement process;
(c) the circumstances under which each type of procurement process shall be used;
(d) the circumstances under which a tendering process is not required;
(e) the circumstances under which in-house bids will be encouraged as part of a tendering process;
(f) how the integrity of each procurement process will be maintained;
(g) how the interests of the municipality or local board, as the case may be, the public and persons participating in a procurement process will be protected;
(h) how and when the procurement processes will be reviewed to evaluate their effectiveness; and
(i) any other prescribed matter.

(Refer to Chapter 1: Introduction for further detail)

Who should be responsible for developing your municipality's/local board's procurement bylaw/resolution?

Individuals involved in the development of the procurement bylaw/resolution will vary from one municipality/local board to another. The municipality/local board should consider involving the staff that is most familiar with purchasing and has an understanding of policy making. It is also recommended that you consult your municipal/local board solicitor before passing a procurement bylaw/resolution.
(Refer to Chapter 2: Getting Started for further detail)

When should the procurement policy review begin? How long will it take?

The municipality/local board can only determine the time frame required for the policy review once it has a clear understanding of what is required by the legislation and how the requirement compares with its current procurement bylaw/resolution. It is suggested that the municipality/local board conduct this assessment as soon as possible as the Act requires the council/local board to adopt procurement policies before January 2005. In developing its time frame, the municipality/local board should be mindful of the municipal election scheduled for November 2003 and the time required to implement the bylaw/resolution, to communicate the changes to suppliers and to educate and train the municipal/local board staff.

Where can I go for further information?
The guide is available on the Ministry Web site at www.mah.gov.on.ca. You may also wish to contact any of the ministry offices listed in the back of the guide.

A Process to Developing Your Procurement Bylaw

STAGES	SUGGESTED ACTIONS
1. Familiarize yourself with section 271 requirements of the *Municipal Act, 2001*	Review Chapter 1 of the guide
2. Review the guide to obtain advice on ways of meeting the requirements	Review the guide
3. Collect and review your municipality's/local board's bylaws, policies, procedures and practices	Determine which subjects from (a) to (h) listed in Section 271 (1) are addressed in existing documents
4. Formulate goals for your procurement processes	i) Review suggested goals and performance measures in guide (Chapter 3) ii) Review goals of comparable municipalities iii) Consult stakeholders
5. Formulate policies on types of procurement processes that will be used and refine the goals for each and the circumstances for their use	i) Review advice in guide on this matter (Chapter 4) ii) Review results of stages 3 & 4 iii) Determine the parts of the by-laws, policies, procedures, practices that have not worked or presented problems iv) Determine what revisions to existing policies are required and what new policies are required to formulate this part of the by-law/resolution
6. Formulate policies on maintaining integrity and protecting stakeholders' interests in procurement process	i) Review advice in guide on this matter (Chapter 5) ii) Review results of stages 3 & 4 iii) Determine the parts of the by-laws, policies, procedures, practices that have not worked or presented problems iv) Determine what revisions to existing policies are required and what new policies are required to formulate this part of the by-law/resolution vs. procedural manual
7. Formulate policies about reviewing and evaluating the effectiveness of the procurement processes	i) Review advice in guide on this matter (Chapter 6) ii) Review results of stages 3 & 4 iii) Determine the parts of the by-laws, policies, procedures, practices that have not worked or presented problems iv) Determine what revisions to existing policies are required and what new policies are required to formulate this part of the by-law/resolution

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1. INTRODUCTION

Purpose of guide

In December 2001, a new Municipal Act (*Municipal Act, 2001*, S.O. 2001, Chapter 25, hereinafter referred to as the "Act") was passed by the Ontario Legislature. The Act gives municipalities a broad new flexibility to deal with local circumstances, and to react quickly to local economic, environmental or social changes. A new feature of the Act is the transparency/accountability provisions aimed at ensuring taxpayers can easily understand how their municipality operates. **As part of this requirement, before January 2005, municipalities and local boards must develop policies – adopted by bylaw or in the case of local boards by resolutions – that will be used for procuring goods and services**. This procurement guide will help municipalities and local boards fulfil this requirement. Please let us know whether we have helped you do this by completing the survey in Chapter 7.

> This is a guide, not a directive. The guide outlines the steps that can be taken to develop bylaws/resolutions for procuring goods and services. **The guide does not provide directions on how to procure goods and services.** Since the guide is advisory in nature, it should not be relied on as a substitute for legal or professional advice. The Ministry of Municipal Affairs and Housing is not liable for any damages that may result as a result of the municipality or local board relying on the information presented in the guide. A municipal/local board solicitor should be consulted before passing a procurement bylaw/resolution.

Some municipalities have already developed procurement bylaws under the new requirements of the Act. The Ministry of Municipal Affairs and Housing is working with municipal associations to make these bylaws, once passed, available on links to the Municipal Act e-guide Web site (http://www.mah.gov.on.ca/userfiles/HTML/nts_1_7746_1.html). Stay posted to section 271 of the e-guide for links to these bylaws.

Who developed the guide?

The guide was developed by the Ministry of Municipal Affairs and Housing (MAH). The ministry had the advantage of the advice of municipal and business representatives who worked with the province to develop the guide. Additionally, a group of outside reviewers commented on the draft guide and provided further feedback. The ministry is indebted to the members of this working group and the outside reviewers who gave willingly of their time and expertise to develop this product. Appendix 6 lists the working group members.

What does the legislation about procurement require?

Before January 1, 2005, a municipality and a local board shall adopt policies with respect to its procurement of goods and services, including policies with respect to,

(a) the types of procurement processes that shall be used;
(b) the goals to be achieved by using each type of procurement process;
(c) the circumstances under which each type of procurement process shall be used;
(d) the circumstances under which a tendering process is not required;
(e) the circumstances under which in-house bids will be encouraged as part of a tendering process;
(f) how the integrity of each procurement process will be maintained;
(g) how the interests of the municipality or local board, as the case may be, the public and persons participating in a procurement process will be protected;
(h) how and when the procurement processes will be reviewed to evaluate their effectiveness; and
(i) any other prescribed matter.

For municipalities, the policies must take the form of a bylaw. Section 271 of the Act needs to be read in conjunction with section 5, which requires the powers of a municipality be exercised by its council through the enactment of bylaws. **Local boards usually exercise their powers by resolution.** Some municipalities currently have procurement "policies," but they may not form part of a bylaw. Generally, this can continue, as long as policies dealing with issues set out in (a) to (h) are incorporated into a bylaw.

Is your local board covered by this legislation?

This legislation applies to the following local boards:

- municipal service boards
- transportation commissions
- public library boards
- boards of health
- planning boards
- area service boards
- local services boards
- local roads boards
- district social services administration boards (DSSABs)
- a local housing corporation described in section 23 of the *Social Housing Reform Act, 2000*
- any other board, commission, committee, body or local authority exercising any power (a) under any Act with respect to the affairs or purposes of one or more municipalities, or (b) with respect to municipal affairs or purposes in unorganized territory
- municipal corporations established under section 203 of the *Municipal Act, 2001*
- other bodies prescribed by the Minister (to date, no other bodies have been prescribed).

Excluded from the requirements are the following local boards*:

- school boards
- conservation authorities
- police services boards
- hospital boards

Note that some municipalities provide a procurement function for these local boards that are excluded from the requirements. This practice can certainly continue and municipal officials should discuss with the relevant local board whether all or some of the municipality's purchasing policies will apply when procuring goods and services for the local board.

There is the opportunity for improved efficiency and clarity for both the municipality/local board and vendors if the local board and the municipality develop similar policies.

Who is the intended audience for the guide?

The guide has been written to serve a range of audiences. It is assumed that the intended user already has a good understanding of municipal administration and is comfortable working with legislation. In particular the guide has been written for the municipal or local board staff persons who will be developing the procurement bylaw or resolution. These individuals would typically include the municipal clerk, municipal treasurer and local board secretary. In a larger municipality these individuals could be the purchasing manager/agent or a policy officer in the chief administrator office.

* Note that although not specifically enunciated in the Act, municipal hydro corporations incorporated under the *Business Corporation Act, 1990* are deemed not to be local boards of the municipality for the purposes of any Act. See section 142(6) of the *Electricity Act, 1998*.

Why is it important to have policies on procurement?

Aside from the accountability and efficiency benefits that flow from having policies in place about procurement, there are several other important reasons to establish these policies:

> **First**, the policies provide a context for addressing the current key issues in procurement. These include how to put reasonable non-financial conditions in place, when sole sourcing is appropriate, protecting proprietary information, modern effective procurement practices like the "two-envelope" system and conflict of interest issues.
>
> **Second**, in the absence of municipal/local board policies, case law may set the policy for you. Much of the litigation in the area of public procurement arises where the governmental entities starts using practices not set out in (or anticipated by) its policies. Similarly, if the agency bases a decision on criteria other than those specified at the outset, then it runs a risk of legal challenge. Unlike private sector buyers, public sector buyers do not have the same ability to **"refuse bids at discretion"** and decisions must be based on supportable rationale.

Use and organization of the guide

The guide is not a procurement procedural manual. Rather, the guide is organized so it leads you through the steps you'll need to take to develop your bylaw/resolution. The key steps to the policy development process are explained in Chapters 2 through 6 of the guide.

The second chapter, "Getting Started," will help you determine where you are now. You are unlikely to be starting with nothing, but rather working from an existing procurement bylaw/resolution and procurement procedures. Here, you'll also find some guidance on council's role in approving the procurement bylaw/resolution and how to gain the input of key stakeholders in formulating your bylaw/resolution.

The third chapter examines the goals to consider in formulating your bylaw/resolution. To provide clarity about the goals and to assess whether they are being met, the guide provides ways of measuring success such as performance measures for procurement.

Once you have established your goals, the fourth chapter will help you move from your current reality to what you envision as your new bylaw/resolution. Chapters five and six will lead you through the key steps in formulating each of the components of the policies required by the legislation:

- how to develop the policies about the types of procurement processes that will be used, their goals and the circumstances in which they will be used
- how to create policies on maintaining integrity and protecting the range of interests in procurement
- how to formulate policies on evaluating procurement processes.

The operating context for municipal/local board procurement

In the municipal/local board sector, procurement is a dynamic, sometimes complex process. It is governed by contract law as well as statutes including the Act, *Discriminatory Business Practices Act,* R.S.O. 1990, Chapter D.12, *Municipal Business Corporations O. Reg. 168/03, Fairness is a Two Way Street Act (Construction Mobility) 1999*, S.O. 1999, Chapter 4 and the *Labour Relations Act, 1995*, S.O. 1995, Chapter 1 Schedule A, as amended, provisions dealing with the industrial, commercial and institutional (ICI) sector of the construction industry. Interprovincial trade agreements (see Appendix 4 of the guide for more information) and decisions of the Information and Privacy Commissioner may also apply to municipal/local board procurement. Where procurement involves financing leases, certain requirements such as a statement of financing policies and goals adopted by council and reporting to council on leasing need to be in place. Regulation 46/94 of the Act provides details of these and other requirements.

Developing procurement procedures requires this knowledge as well as an understanding of how the marketplace operates, skills in problem solving and negotiation and knowledge of management control systems. Given the complexity of the process, municipal and local board officials are encouraged to take training in procurement. Training and advice on procurement is widely available from several sources. Appendix 2 provides a listing of these sources.

2. GETTING STARTED

This chapter will help you determine the preparatory steps that need to be taken before you start developing your procurement bylaw/resolution.

What do you currently have in place about procurement?

To get started in developing your procurement bylaw/resolution, you will want to ensure you have a good understanding of your existing bylaws, policies, procedures and practices. **For purposes of the guide, policies refer to matters that council has adopted by bylaw, or in the case of a local board by resolution.** Procedures are built from the policies, indicating expectations of how the policies will be implemented. Practices refer to the actual activities undertaken in the procurement process.

In this evaluation you will find that some of the most common problems with your existing policies, procedures and practices may include the following:

- procurement procedures may be decentralized with procedures differing from one organizational unit to another within the municipality or local board
- policies and procedures may not have kept up with new, more effective methods of procurement
- the procurement practices set out in policies and procedures are being used, but the circumstances in which they are being used are not those that were intended by the policy.

Determining the gaps

Once you are familiar with your policies, procedures and practices, you will be able to determine the parts that can be used for the new bylaw/resolution. You will also be able to determine where they have not worked well or have presented problems. Keep in mind the key issues your policies need to deal with:

- the types of procurement processes that will be used
- the goals for each type
- when each type will be used
- when you will not tender (i.e. competitive procurement)
- when you will encourage in-house bids
- how you'll ensure integrity and protect the interests of the affected parties
- how and when you'll evaluate your processes.

Prior to reviewing your policies, procedures and practices, it may be helpful to read through this document in its entirety so that you will have a clear understanding of what to look for when reviewing your existing policies, procedures and practices.

After completing this step you should have a good understanding of where the gaps are between the subjects you need to address in your bylaw/resolution and your current policies, practices and procedures. Closing this gap is not the same as determining what your policies ought to be. You may find that while you have information for properly addressing the required subjects of section 271 of the Act, you do not have in place the policies that you need given your new goals and the associated risks (see risk management discussion in Chapter 5). The following chapters of the guide will assist you in formulating these new goals and closing these latter gaps.

How is your new procurement bylaw/resolution likely to be different from what you currently have?

As noted earlier, the procurement policies required by the Act must take the form of a bylaw or resolution. You will likely find that your existing bylaw/resolution addresses some but not all of the issues that you must address. For example, your bylaw/resolution will likely indicate the types of processes that will be used but is unlikely to state the goals or how integrity will be maintained and, how interests will be protected. You will probably

have to look at your procedures and practices (or "policies" that aren't currently part of your bylaw/resolution) to answer these other questions. In other words, the new procurement bylaw/resolution that you need to develop is likely to be a cross between what you currently have in your bylaw/resolution and what you have in a procedural manual and unwritten practices. You may choose to create an entirely new bylaw/resolution or just amend your existing bylaw/resolution to address the new requirements.

The requirements set out in the legislation are the minimum list of subjects that your bylaw/resolution needs to deal with. You may find that your bylaw/resolution addresses a range of other issues as well.

Council's/local board's role in approving procurement policies

By this point you will begin to see that certain matters that may currently be at the discretion of staff – that is, are delegated to staff as procedural matters – are subjects that will have to form part of the bylaw/resolution.

Note also that section 224 of the Act provides that "*...it is the role of council to represent the public and to consider the well-being and interests of the municipality, to develop and evaluate the policies and programs of the municipality, to ensure that administrative practices and procedures are in place to implement the decisions of council, ...to maintain the financial integrity of the municipality.*"

The council/local board role in implementing the procurement bylaw/resolution is discussed in Chapter 5.

Stakeholder consultation

In formulating your procurement policies, you will want to keep in mind council's first role to represent the public and consider the well-being and interests of the municipality. There are many ways of representing and considering the public interest, but in the Ontario municipal tradition, almost all involve gaining input. Some methods may be simple whereas others may be formal and sophisticated (e.g. on-line surveys, focus groups). In some instances, the municipality/local board may choose to combine consultation processes. Below are some consultation methods to consider when developing your program. These are only suggestions. Stakeholder consultation is not required by the Act.

Public meetings are an excellent way to convey information to a large group. This provides everyone at the meeting with the opportunity to hear and discuss the issue. The Internet also gives an opportunity for e-discussion groups, and can help minimize travel time and inconvenience for those whose input you are seeking.

Open houses allow more detailed information to be presented. The public is invited to a location and given the opportunity to speak with staff and view information displays.

Public advisory committees consist of representatives from a particular community, region or interest group who perform a specific advisory function for the municipality. The group is intended to represent the broader community. Such a committee is usually organized to handle a specific situation and to promote community relations.

Focus group sessions are meetings of invited participants who discuss a proposed action or initiative. They are designed to provide detailed reactions to proposals and are structured to be informal to encourage open discussion. This method is useful when preliminary ideas have been developed and further refinements are needed.

Surveys including Internet-based surveys solicit information from a representative sample of citizens. The same questions are asked of every individual surveyed. This process can be beneficial; however, it is suited for circumstances where immediate results are not required.

Informal communication is necessary to support and connect all formal consultation methods. This could be facilitated through telephone calls, letters, word of mouth and face-to-face meetings. It is a way of ensuring open communication and good community relations.

During the development of the guide, the business community helped build understanding about what municipalities and local boards need to consider from the supplier's perspective in shaping procurement policies. They suggest greater use of competitive processes and that procurement policies should be examined to encourage small- and medium-size businesses to participate in municipal/local board procurement. Some municipalities make it a practice to meet with their supplier community regularly, for example, annually or semi-annually to gain their input on improving procurement processes.

While the focus of the guide is on assisting municipalities/local boards to develop bylaws/resolutions on those matters set out in the legislation, there are a number of considerations to take into account in developing procurement procedures and practices that would make a difference for small- and medium-size businesses. Examples suggested include making the municipality or local board processes more transparent for developing approved vendor or pre-qualification lists; developing tracking systems to determine access of small- and medium-size businesses to municipal contracts; providing prompt payment to avoid cash flow difficulties especially experienced by smaller firms; and explaining to unsuccessful bidders why the bid failed and how they could improve their chances in the future.

3. GOALS

This chapter will help you determine the goals that need to be considered in fulfilling the requirements of section 271(1)(b) of the *Municipal Act, 2001*, S.O. 2001 Chapter 25.

To build the procurement policies, you will want to consider what the overall goals are that the municipality/local board is seeking to promote with its policies. The working group has developed a suggested list of goals (and related definitions and measures). These are "good public administration" goals that will serve to maintain integrity and protect the interests of a range of stakeholders in the procurement process.

As well, each council/local board should assess whether there are additional goals that are appropriate. The approach taken could include reviewing the goals against the broader strategic goals and values of the municipality/local board, consulting stakeholders and the public or reviewing the goals against comparable organizations.

Imposing social or economic goals

Some municipalities impose social or economic goals (e.g., "fair wage" or "local content" requirements on suppliers) on their procurement policies. If this is the case, there are a few important considerations to keep in mind in reviewing these policies:

First, such goals can only be implemented in the context of certain restrictions (e.g., case law, statutes and trade restrictions) mentioned in Chapter 1.

Second, it is important that these goals be transparent. Much of the litigation in the public procurement area arises from a government agency not specifying and translating its goals into explicit selection criteria before using them as criteria in making award decisions.

Third, the extent to which such goals restrict the number of bidders or increase bid prices needs to be carefully considered by the council/local board.

A review of these goals may also be helpful in addressing another accountability measure in the Act. One of the requirements of section 300 of the Act is that municipalities must provide notice to the public, at least annually, of barriers identified to achieving improvements in the efficiency and effectiveness of the delivery of services.

Suggested goals

The following goals should be considered in developing your procurement bylaw/resolution.

Effectiveness
Effectiveness refers to the extent to which the procurement process is achieving its intended results (i.e., the process delivered the goods and services required to meet the municipality's/local board's needs). The results here are the "substantive" or quality results as opposed to process results. Process results are the types of results that are described in the goals below.

Objectivity
Objectivity refers to approaching the procurement of goods and services in an unbiased way not influenced by personal preferences, prejudices or interpretations.

Fairness
Fairness refers to applying the policies equally to all bidders.

Openness and Transparency
Openness and transparency refer to clarity and disclosure about the process for arriving at procurement decisions. Municipal/local board procurement is undertaken within the context of legal considerations about confidentiality and the protection of privacy. Policies that promote openness and transparency need to be governed by these considerations.

Accountability
Accountability refers to the obligation to answer for procurement results and for the way that procurement responsibilities are delegated. Accountability, unlike responsibility, cannot be delegated.

Efficiency
Efficiency measures the quality, cost and amount of goods and services procured as compared to the time, money and effort to procure them.

Performance measures for the procurement process

To add some further clarity to these terms and to position your municipality/local board to review and evaluate the effectiveness of the procurement processes, please refer to Appendix 3. Appendix 3 lists ways to measure these goals through the use of performance measures. The suggested performance measures discussed are recognized good practices rather than a legal obligation. As such, municipalities/local boards are not obligated to use them.

Additional context for goals

a) Legislative context

Along with these goals, the procurement policies you develop need to be set in the context of relevant legislation and trade agreements. The *Municipal Act, 2001* has been discussed above and will be referenced throughout this document. Other legislation, including the *Municipal Freedom of Information and Protection of Privacy Act*, also need to be considered in the procedures and practices of procurement, in addition to those mentioned in Chapter 1. Case law also plays an important role in this subject. Detailed training of this nature is available from several sources listed in Appendix 2.

b) Interprovincial trade agreements

i) Dollar thresholds

The Agreement on the Opening of Public Procurement for Ontario and Quebec and the Agreement on Internal Trade are interprovincial trade agreements, which under their terms, apply when "MASH entities" (municipalities, municipal organizations, school boards and publicly-funded academic, health and social services entities) engage in:

- goods and services procurement with an estimated value of $100,000 or more
- construction procurement with an estimated value of $100,000 or more (under the Agreement on the Opening of Public Procurement for Ontario and Quebec);
- construction procurement with an estimated value of $250,000 or more (under the MASH Annex to the Agreement on Internal Trade).

"MASH entities" is a defined term in the agreements and include municipalities and municipal organizations. Under the agreements, for procurements at or above the above threshold levels, MASH entities are not to discriminate in their procurement practices against suppliers based on suppliers' geographic location. For procurement below these thresholds, the agreements require MASH entities to respect the spirit and intent of the agreements. See Appendix 4 of the guide for more information.

ii) Advertising requirements

One way that the agreements promote non-discrimination is by requiring MASH entities to advertise procurement opportunities valued at or above the set threshold levels. Under the agreements this can be done by using, at minimum, an electronic advertising/tendering system that provides equal access to potential vendors across the country (for additional advertising under the Agreement on the Opening of Public Procurement for Ontario and Quebec see Appendix 4). In consultation with the municipal and business representatives who worked with the province to develop the guide, it has been suggested that a MASH entity may be able to satisfy this requirement by posting procurement opportunities on its Web site. See Appendix 4 for more information.

iii) Exceptions

The agreements provide for a number of exceptions to their application under special circumstances. For example:

- if guarantees on previous work require the use of a particular contractor, if there is a need to ensure compatibility with existing products or to protect exclusive rights
- if compliance with the open tendering provisions would interfere with the ability to maintain security or protect human, animal or plant life or health
- if goods and services are being purchased on behalf of a party not covered by the agreement.

A summary of these exceptions is provided in Appendix 4.

iv) Dispute resolution between suppliers and MASH entities

The agreements require MASH entities to have a clearly established and documented complaint resolution process in place, and require a supplier to follow this protocol should a complaint arise with a MASH entity.

Under the agreements, if a complaint cannot be resolved between a supplier and a MASH entity, the supplier may ask its home province for help. If the home province determines that a complaint has merit or if there are recurring complaints against a particular MASH entity, the supplier's home province may try to resolve the issue with the MASH entity's home province. If no resolution is reached, a formal dispute resolution panel may be established to review the case. It is important to note that the dispute resolution procedures under the agreements are designed to deal only with interprovincial complaints (i.e., situations in which a supplier and a MASH entity are located in different provinces). See Appendix 4 for more information.

4. TYPES OF PROCUREMENT PROCESSES AND WHEN TO USE THEM

This chapter will help you fulfil the requirements of sections 271(1)(a)(b)(c)(d) and (e) of the *Municipal Act, 2001,* S.O. 2001 Chapter 25.

As previously stated, the legislation requires policies to be adopted on the types of procurement processes that will be used, the goals of each, the circumstances under which each type will be used, and the circumstances where a tendering process is not required.

To help you develop these policies, three tables have been created outlining the goals, descriptive features, and circumstances for use for the types of procurement processes used by municipalities and local boards. These tables cover a variety of competitive and non-competitive procurement.

A high level of detail on non-competitive procurement has been provided in Appendix 4.

Non-competitive procurement includes sole sourcing and single sourcing. Sole sourcing is the procurement of a good or service that is unique to a particular vendor and cannot be obtained from another source. Single sourcing is the procurement of a good or service from a particular vendor rather than through solicitation of bids from other vendors who can also provide the same item. Single sourcing may be the best course to take in some circumstances, but it is important to be transparent in the municipal/local board policies about what those circumstances will be.

Most likely, your municipality/local board already has a policy that refers directly or indirectly to the types of procurement that will be used – which may be different than the types set out here – and the circumstances where each type will be used. In this case, you will want to review these to ensure they are appropriate to your current environment.

While the types of procurement processes used and the circumstances where they will be used are likely to be documented in your policies or procedures, the goals for each type are less likely to be written down. Table 1 offers guidance on this point, setting out suggested key goals that should be considered when using the different types of procurement processes.

You may wish to use the "descriptive features" contained in Table 2 to ensure clarity on what the procurement processes mean in your procurement policy.

The typical circumstances where each procurement process is to be used are set out in Table 3. In confirming or formulating the policy about the circumstances for use of each type of procurement, you will want to advise your council/local board on what the dollar threshold will be for using each type of procurement process.

Table 1. Goals of Procurement Processes

Item	Competitive Process Seeking Multiple Bids or Proposals				Non-Competitive Procurement
	Request for Proposal	**Request for Tender**	**Request for Quotation**	**Informal, Low Value Procurement**	
Key goals	To implement an effective, objective, fair, open, transparent, accountable and efficient process for obtaining unique proposals designed to meet broad outcomes to a complex problem or need for which there is no clear or single solution. To select the proposal that earns the highest score and meets the requirements specified in the competition, based on qualitative, technical and pricing considerations.	To implement an effective, objective, fair, open, transparent, accountable and efficient process for obtaining competitive bids based on precisely defined requirements for which a clear or single solution exists. To accept the lowest bid meeting the requirements specified in the competition.	Same as for Request for Tender, except that bid solicitation is done primarily on an invitational basis from a pre-determined bidders list but may be supplemented with public advertising of the procurement opportunity.	To obtain competitive pricing for a one-time procurement in an expeditious and cost effective manner through phone, fax, e-mail, other similar communication method, vendor advertisements or vendor catalogues.	To allow for procurement in an efficient and timely manner without seeking competitive pricing. To provide for exceptions to the procurement requirements of interprovincial trade agreements. To also provide for any additional exceptions stipulated in the municipality's or local board's purchasing bylaw/resolution or policies, providing that they are not in contravention of the interprovincial trade agreements.

Table 2. Descriptive Features of Procurement Processes

Item	Competitive Process Seeking Multiple Bids or Proposals				Non-Competitive Procurement
	Request for Proposal	Request for Tender	Request for Quotation	Informal, Low Value Procurement	
Sealed bids or sealed proposals required	Always			Not Applicable	
Issue a Request for Information or a Request for Expressions of Interest/Pre-qualification prior to or in conjunction with a call for bids or proposals	Moderate to High Likelihood	Low to Moderate Likelihood		Not Applicable (needs statement may still be required)	
Call for bids or proposals advertised	Done in accordance with requirements of interprovincial trade agreements when estimated procurement value is $100,000 or more; otherwise, done sometimes.	Always	Same as for Request for Proposal	Not Applicable	
Formal process used to pre-qualify bidders/ proponents (i.e. Request for Pre-qualification)	Moderate to High Likelihood		Low Likelihood	Not Applicable	
Seek bids or proposals from known bidders/ proponents (Bidders List)	Always	Low to Moderate Likelihood	Always	Moderate to High Likelihood	

Table 2. Descriptive Features of Procurement Processes (Cont'd)

Item	Competitive Process Seeking Multiple Bids or Proposals				Non-Competitive Procurement
	Request for Proposal	Request for Tender	Request for Quotation	Informal, Low Value Procurement	
Two-envelope[1] or similar multi-stage approach used	Moderate to High Likelihood	Not Applicable			
Bids or proposals opened and announced at a public meeting (excluding proprietary information)	Low to Moderate Likelihood	Always	Moderate to High Likelihood	Not Applicable	
Type of agreement with supplier	Purchase order, legally executed agreement, or blanket contract (standing agreement/offer).			Purchase by cash, purchase order, or credit card.	Cash, purchase order, credit card, legally executed agreement, or blanket contract (standing agreement/offer).
May include In-house bidding in addition to external bidding	Yes			Not applicable	

[1] In the two-envelope approach, qualitative and technical information is evaluated first and pricing information in a separate envelope is evaluated thereafter only if the qualitative and technical information meet a minimum score requirement predetermined by the municipality/local board. For more details, see Appendix 5.

Table 3. Circumstances for Use of Procurement Processes

Item	Competitive Process Seeking Multiple Bids or Proposals				Non-Competitive Procurement
	Request for Proposal	Request for Tender	Request for Quotation	Informal, Low Value Procurement	
Dollar value of procurement	Low to High Value	Medium to High Value	Low to Medium Value	Low Value	Any value, subject to proper authorization and to requirements of the interprovincial trade agreements
Purchaser has a clear or single solution in mind and precisely defines technical requirements for evaluating bids or proposals	Rarely	Always			
In evaluating bids/proposals from qualified bidders, price is the primary factor and is not negotiated	Low to Moderate Likelihood	Always			Not Applicable

Table 3a. Non-Competitive Procurement: Circumstances Where a Tendering Process is Not Used

Typically, non-competitive procurement is used in the following circumstances:

- when there is a statutory- or market-based monopoly on the item
- when no bids were received in a competitive process
- when the required item is covered by an exclusive right such as a patent, copyright or exclusive licence
- when the purchase is already covered by a lease-purchase agreement where payments are partially or totally credited to the purchase
- when it is necessary to ensure compatibility with existing products or to avoid violating warranty/guarantee requirements when service is required
- when the required item is in short supply due to market conditions
- when competitive sourcing for low value procurement would be uneconomical or would not attract bids
- when competitive procurement may be found to be impractical for such items as meal expenses, incidental travel expenses (e.g. taxi service, phone calls), and training and education expenses
- when an urgent procurement is necessary for fulfilling a statutory order issued by a federal or provincial authority, such as an environmental, public health, or workplace safety compliance order.

The Agreement on Internal Trade and the Ontario-Quebec Trade Agreement also specify exceptions to competitive sourcing. These exceptions and exclusions are summarized in Appendix 4.

In addition to the types of procurement processes explained in the tables, there are two other commonly used procurement processes that, if used, should be documented in the procurement bylaw/resolution. These include the "two-envelope" procurement process and the Vendors of Record (VOR) process. Each is explained below.

The "Two-Envelope" procurement process

The two-envelope approach is used when the purchaser wants to evaluate the technical and qualitative information of a given proposal without being influenced by prior knowledge of the corresponding pricing information. The "two-envelope" process is used when a request for proposal (RFP) is issued. In this process, each bid is submitted in two envelopes with technical and qualitative information shown in the first envelope and the bid price in the second. The second envelope is opened only if the first envelope shows the bidder is qualified. This process has significant benefit and may be included in the municipal/local board procurement policy. More details about this process are found in Appendix 5.

Vendors of record

VOR is a procurement process where the municipality/local board seeks out bids or proposals from a select group of vendors with which it has already established a satisfactory business relationship.

If your municipality or local board relies on a VOR system, then you will want to provide for that in your policies. The goals of this type of procurement and the circumstances where this type of procurement will be used should be clearly documented in your procurement policies.

A VOR may be used either directly to procure goods and services – that is without further competition – or indirectly as the basis for inviting proposals, tenders or bids from suppliers.

i) Using a VOR directly for procuring goods or services

If this type of procurement process is used directly for procuring goods or services, then a standing agreement/offer should be in place. The goals are to have a qualified, reliable, cost effective provider available when the need arises without facing the administrative costs of obtaining several quotes. The

typical circumstances for using a VOR procurement process include the following:

- there is a repetitive need for the good or service
- the actual quantity required cannot be precisely anticipated, but delivery is to be made when a requirement arises
- the criteria for evaluating the bids can be fully defined in advance and price is the primary factor.

ii) Using a VOR as the basis for inviting bids

Using a VOR system as the basis for inviting proposals, tenders or bids from two or more proponents from a preferred bidders list is typically done in circumstances where the municipality/local board needs to move quickly to fill a business need. In developing a VOR that will be used in this manner, the goals are similar to those for the type of procurement that the VOR is to be used for – as set out in Table 1. However, the policies should make clear that placing proponents on a VOR does not mean automatic acceptance of their bids.

Some municipalities have moved away from a VOR system as the basis for inviting bids. There are concerns about the public cost of providing the bid documents to several potential suppliers, some of whom may be uninterested in bidding. As well, there are concerns about the time and money involved in keeping the VOR up to date to ensure it remains reliable. These municipalities have a policy of posting opportunities on their Web site and advising potential vendors that it is their responsibility to monitor the site.

iii) Developing a VOR

There are several routes to take to form a VOR. Sometimes a "Request for Pre-Qualifications" or "Request for Expressions of Interest" process will be used. These processes are also used outside or in the absence of a VOR system to determine qualified bidders for a specific purchase. Alternatively, the municipality/local board may simply have an advertisement on its Web site to inform potential suppliers how to apply for inclusion on the bidder's list. In this situation, the municipality/local board will sometimes charge qualified applicants a fee to be notified of potential contracts. (If a VOR is to be used for directly procuring goods or services through a standing agreement/offer, then the municipality/local board needs to have in place one of the processes described above or a less formal process for pre-qualifying VOR candidates. If, however, the VOR is used as the basis for inviting bids, then pre-

qualification of bidders is optional as the municipality/local board will still be going through a competitive process to arrive at its procurement decision.)

Some municipalities have a policy of dropping vendors from the list who have not responded to invitations to submit bids for an extended period of time, usually 12 or 24 months. Reviewing and establishing a new VOR at least once every three years encourage competition and provide assurance that the municipal/local board is continuing to receive the best value.

Finally, there is no requirement to use a VOR system. However, if one is used, the route the municipality/local board takes to place and remove suppliers from the list should be consistent and transparent. This is a critical concern of the business community.

iv) Implications of interprovincial trade agreements on VOR

Special rules apply in the case of procurement that is subject to interprovincial trade agreements. In these circumstances, under the provisions of the agreements:

- if a MASH entity (see Appendix 4 for more information) is pre-qualifying suppliers for a specific procurement, the call for bids or proposals require that they be advertised each time.
- If a MASH entity maintains a list of suppliers on an "on-going" basis, it must provide suppliers who are not on the list an opportunity to qualify. This opportunity must be advertised at least annually.
- Suppliers that have been placed on a pre-qualified list must be invited to bid on all contracts within the category of goods or services where they have been pre-qualified.

In-house bids

Section 271 of the Act also requires for municipal and local boards to have policies about the circumstances where in-house bids will be encouraged as part of a tendering process. In-house bids is a process that allows for internal staff to compete with external entities for procurement opportunities.

If in-house bids will be considered, municipalities/local boards should advise all potential suppliers in the bid documents that in-house departments will be permitted to submit bids.

Before developing a policy for in-house bids, the municipality/local board should carefully consider its existing collective agreements and their implications on implementing an in-house bid process. If the municipality/local board proceeds to have a policy that encourages in-house bids in certain circumstances (as opposed to no circumstances), then the following should be considered:

- The council/local board supports considering in-house bids.
- The direct and indirect costs (e.g., dollars, staffing, technology and equipment) required to produce the activities. This allows costs to be fairly attributed and in-house bids to be fairly evaluated against external bids.
- The municipality/local board is prepared to separate its role as purchaser of the service from its role as provider of the service. In-house bids need to be arms–length from all aspects of the procurement process. This includes defining the scope of the work, preparing and circulating the bid document, evaluating the bids, negotiating the contract and monitoring performance and addressing poor performance. This is to promote objectivity, avoid conflicts and challenges to the process.
- The municipality/local board has a contingency plan in place to deal with the scenario where the in-house bid is unsuccessful.
- There are clear policies in place about what municipal/local board support, if any, will be provided to the in-house bid proponents, what performance guarantees will be sought and how failure to perform to the contracted agreement will be dealt with.

In addition to the considerations above, the following steps should precede the decision to seek bids, including in-house bids, for any major service contract:

- review the service to determine if it continues to serve the needs of the municipality's/local board's residents and customers
- put the expected outcomes of the service in measurable terms (considering the performance outcomes of the best performing organizations)
- have the council/local board clearly establish service levels.

5. MAINTAINING INTEGRITY AND PROTECTING INTERESTS IN PROCUREMENT

This chapter will help you fulfil the requirements of sections 271(1)(f) and (g) of the *Municipal Act, 2001*, S.O. 2001, Chapter 25.

Section 271 of the Act, requires that policies be put in place about how the integrity of each procurement process will be maintained and how the interests of the municipality/local board, the public and persons participating in a procurement process will be protected. This section will assist you in formulating policies to deal with these matters.

Formulating policies on these matters provides an opportunity to address a number of key issues in procurement that were outlined earlier. Once again, these issues include putting reasonable non-financial conditions in place, sole sourcing, proprietary information, the two-envelope system and conflict of interest issues.

What do you currently have in place?

You may very well have a number of integrity measures in place, even though they are not categorized as "integrity measures." Similarly, you may have a number of policies in place on protecting the interests of the municipality/local board, the public and persons participating in the procurement process, but again, they may not be named as such.

You could choose to construct a new bylaw/resolution organized by the legislative requirements, that is, setting out specific measures to maintain integrity and protect interests. Alternatively, you could choose to identify the specific policies in the existing bylaw/resolution that serve these ends and seek council's/local board's endorsement that these will constitute the municipality's/local board's procurement policies for purposes of the legislation. This approach will afford staff and tne council/local board an opportunity to examine whether the existing measures are adequate. Even if no new directions are established but instead existing policy is classified according to the specific legislative requirements, council/local board

approval is still required. Your municipality's/local board's solicitor should be consulted if you consider this route.

A risk management approach

A helpful way to determine the measures you need to have to maintain integrity and protect stakeholder interests is to identify the possible threats to the goals of your procurement processes. As noted earlier, the guide suggests the following goals: effectiveness, objectivity, fairness, openness and transparency, accountability and efficiency. Your council's/local board's policy may have additional goals.

Regardless what the goals are, if they are threatened, then the integrity of the process and/or the protection of participants' interests in the process can be put at risk. The following tables identify the risks that can arise for each goal and the measures that can be taken to minimize or mitigate them.

The guide only suggests general risks and, where relevant risks that can arise at the various steps in the procurement process. While there are many ways to define the main steps in the process, there are five key elements involved:

- defining the scope of work
- preparing and circulating the bid document
- evaluating bids
- preparing and, where relevant, negotiating the contract
- monitoring performance and addressing poor performance of suppliers.

Risks to achieving any given procurement goal do not necessarily arise at every step of the process. Common and key risks for each step have been highlighted. You will want to consider your own processes and determine if there are other risks particular to your own procurement environment.

How to use the risk management charts

In identifying risks, you will want to consider both the likelihood of a risk arising as well as its potential impact. Not all risks can be avoided and even the cost of minimizing or mitigating some may not be justified. Circumstances will vary from one municipality/local board to another, depending on the following factors:

- the scope of the procurement activity
- scale and complexity of the municipality's/local board's business units
- whether procurement is centralized or decentralized
- the diversity and sophistication of the potential supplier base
- the municipality's/local board's organization and history of procurement issues
- the council's/local board's risk tolerance.

You will want to consider these factors when reviewing the risks noted in the following pages. **One approach would be to first review whether the risk identified in the first column is relevant to your municipality/local board. If it is, consider incorporating the suggested policy (in the second column) into your bylaw/resolution. If it is not, move to the next risk.**

Policy or procedure?

The next question to consider is whether the integrity and protection of interests measures should form part of the procedural manual or the bylaw/resolution. You may decide that some of the matters dealt with in the attached are not matters that directly affect the interests of the public and suppliers and hence do not belong in a bylaw/resolution. In that case, you may wish to recommend to your council/local board that it has a policy in place indicating that procedures will be in place to deal with the subject.

As noted earlier, in formulating advice, be mindful that in the absence of policies, case law may set the policy for you.

Good policies will only take you so far

An important consideration about risk: procurement is an important and often complex and expensive component of municipal/local board operations. The effort to establish strong policies may return few dividends if the municipal/local board staff are untrained in all aspects of the procurement processes or are unfamiliar with the ethics policies of the municipality/local board.

Risks to *General Procurement Goals*

Risks	How to maintain integrity and protect interests
Generally	
... if the municipality/local board is unclear about its expected service outcomes and has not established clear evaluation criteria early in the procurement process, then there are risks to every goal of the process.	To minimize these risks, consider a policy of: – ensuring needs are expressed in terms of outcomes – clearly establishing evaluation criteria early in the procurement process.
... if there are no policies in place on how complaints with the procurement processes can be made and dealt with, then there is a lost opportunity to improve the process at several levels and address concerns about objectivity, fairness, openness and transparency.	Consider adopting a policy on how complaints can be registered and dealt with. This also may be part of a larger customer service/quality service policy.
...if it is difficult for municipal/local board staff to follow procurement procedures, then there are risks to many of the goals.	This type of risk can be addressed by having a policy of reviewing procurement procedures regularly. Asking each of the participants in the procurement process for their input can help ensure the procedures are clear and logical and that they support the goals. See Chapter 6.

Risks to *General Procurement Goals* (Cont'd)

Risks	How to maintain integrity and protect interests
Generally	
...if any elected or appointed officials participating in a procurement process have private interests that are in conflict with their interests as public officials, then there is a risk that they may not act in the best interests of the municipality/local board.	The procurement policy should reference a broader ethics and values policy that sets out expected behaviour of elected and appointed public officials and the consequences where they do not comply, (e.g., conflict of interest policy). Note also the provisions of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M. 50, for elected officials. The policy can form part of any orientation, education and training of elected and appointed officials. This can serve to limit risks here and in areas other than procurement. Appendix 2 lists an information resource on these types of policies.

Risks to *General Procurement Goals* (Cont'd)

Risks	How to maintain integrity and protect interests
Throughout the procurement process	
...if there are no standard or template contracts and related documents for each category of procurement and for each step of the process, then there is risk of inefficient use of resources to carry on the procurement process (as well as risks to the perceived fairness and transparency of the processes).	A policy of using standard templates/formats for each category of procurement and for each step of the process and specifying the documentation required at each stage will minimize risks of this nature
...if there are no definitions of key and frequently used terms by the municipality/local board in its policies and procedures, then misunderstandings about the policies and procedures can arise.	The bylaw/resolution should define key and frequently used terms. Note: some municipalities/local boards use the National Institute of Governmental Purchasing Inc.'s *Dictionary of Purchasing Terms*.
...If there is no integration between the procurement processes and the financial system, then there are risks of overspending and delays in meeting payment dates.	Consider adopting policies that integrate procurement processes to the financial system (e.g., monitor/control contract expenditures and ensure that accounts are paid within the prescribed time line and payments are for goods and services received).
When evaluating the bids	
... if the municipality/local board is unclear about the process for evaluating bids, then there are serious risks to every goal of the process.	A policy of documenting the process for evaluating bids can address these risks.

Risks to *General Procurement Goals* (Cont'd)

Risks	How to maintain integrity and protect interests
When evaluating the bids	
...if municipal/local board elected or appointed officials are in contact with suppliers during the bid evaluation process, then integrity can suffer as several of the goals of the procurement process can be put at risk.	➡ A policy of "no informal contact" between municipal/local board staff or elected officials involved in the procurement with potential suppliers during the evaluation period can minimize this risk. (A broader policy on contact at other stages of the procurement process, specifying who, when and how the contact may be made, can address risks that can arise at other stages of the process as well).

Risks to *Effectiveness*

Risks	How to maintain integrity and protect interests
Generally	
When determining the scope of work	
...if the work will be split into two or more parts to avoid the application of the procurement policy, i.e., to come in under a certain dollar threshold, then there can be a risk to the spirit and intent of the policy.	➡ Consider examining whether spending thresholds are appropriate to the current environment, that is, require adjustment in dollar amount or need variation depending on the nature of procurement (e.g., construction vs. goods).
	➡ Consider adopting clear policies about when work splitting will be permitted. Some municipalities do this to enable smaller businesses to gain a piece of the work - within trade agreement limits. These policies should set out any consequences for unwarranted splitting of work.
When preparing the bid documents	
...if it is unclear how bids will be kept secure, then risks to the effectiveness of the process can arise.	➡ Consider adopting policies about how bids are to be kept secure, how proprietary information is to be handled and the confidentiality of bids maintained in accordance with provisions of the *Municipal Freedom of Information and Protection of Privacy Act*.

Risks to *Effectiveness* (Cont'd)

Risks	How to maintain integrity and protect interests
When evaluating the bids	
...if a bid does not show total costs, including taxes, there is a risk that the evaluation of comparable bids can be invalid.	➡ Ensure a policy is in place on how bids are to be presented in terms of costs.
...if a bid does not show the net present value of goods or services that are to be received at a later date, then it may be difficult to evaluate the bid against other bids where all the goods or services are to be received up front.	➡ Policies about how net present value is to be calculated need to be clearly set out.
...if there are no common evaluation criteria in place that bids are usually subject to, regardless of the type of item procured, then there is a risk of missing an opportunity to advance an important corporate goal of the municipality/local board.	➡ Policies that set out common criteria for evaluation of bids, e.g., price, quality, risk, qualifications and experience, strategy, approach, methodology, scheduling, past performance, facilities and equipment.
When negotiating and preparing the contract	
...if the contract language is not carefully reviewed, then it may have unintended legal consequences, e.g., the effect of establishing an employee-employer relationship.	➡ A policy of having the municipal solicitor view significant contracts for these types of implications can reduce this risk.
...if the suppliers have unsatisfactory liability insurance coverage to indemnify the municipality/local board from any damage claims arising from the contract, then municipality/ local board may be at financial risk.	➡ A policy of requiring suppliers to provide evidence of satisfactory insurance coverage can reduce these risks.

Risks to *Effectiveness* (Cont'd)

Risks	How to maintain integrity and protect interests
When negotiating and preparing the contract	
...if the supplier has arrears of premiums owed to or levied by the Workplace Safety and Insurance Board, then the municipality faces potential for financial risks.	➡ A policy of requiring suppliers to provide a Certificate of Clearance can mitigate this risk.
...if there are no policies in place about how contracts will be terminated, then there can be risks to the overall effectiveness of the procurement process including risks of legal challenges.	➡ A policy including "off ramp" provisions in contracts can help reduce this risk.
When monitoring the performance and addressing poor performance	
...if the goods or services received are not inspected promptly to confirm compliance with the contract and any discrepancies quickly identified, then there is a risk of paying for something not wanted.	➡ A policy of promptly inspecting goods or services on receipt and a process for following up on discrepancies can reduce these risks.
...if the contract work is not completed or completed, but the contractor's suppliers or employees are left unpaid, then the municipality faces the financial risk of assuming these costs.	➡ A policy about how these types of risks will be managed should be specified. This could take the form of financial bonds or other forms of security deposits, provisions in the contract for liquidated damages, progress payments and holdbacks and payment bonds to guarantee the payment of labour and material.

Risks to *Effectiveness* (Cont'd)

Risks	How to maintain integrity and protect interests
When monitoring the performance and addressing poor performance of suppliers ➡	The policy on performance surety should be carefully considered given that some forms of surety can prove to be expensive for small and medium sized businesses to obtain and thus limit competition. Where surety is deemed to be required, it should not be excessive but sufficient to cover the financial risks to the municipality/local board.
...if systems are not in place to monitor supplier performance, then poorly performing contractors may be awarded new contracts, increasing the risk to the effectiveness of the procurement processes. ➡	Policies can be put in place to address these issues, including: – randomly sampling contracts to ensure compliance with the set performance evaluation standards (and contract variation requirements) – monitoring the performance of the contract against performance criteria and milestone achievement – intervening early if contractor performance is unsatisfactory – ensuring that employees who are required to manage contracts have sufficient experience, training and support.
...if there is no policy to address repeated poor performance, then the municipality/local board is at risk of not realizing its procurement goals ➡	To minimize the risk of repeated poor performance, a policy should be in place for documenting evidence of unsatisfactory performance (in terms of failure to meet contract specifications, terms and conditions or for health and safety violations). The policy should make clear that evidence must be presented to those in a position to decide on the award of future work to the supplier.

Risks to *Objectivity*

Risks	How to maintain integrity and protect interests
Generally	
...if persons involved in procurement accept gifts from suppliers or potential suppliers, then there is a risk that procurement decisions will not be objective.	➡ A policy of not accepting gifts can help address this risk.
When determining the scope of work	
...if needs are defined by the supplier, rather than the municipality/local board (through, as an example, procuring goods or services through unsolicited proposals), then the objectivity of the procurement function can be put at risk.	➡ Ensure clear policies are in place about the circumstances under which unsolicited proposals will result in a procurement.
When evaluating the bids	
...if bids are not comparable in terms of standards for product or services, then the objectivity of the evaluation of the bids can be put at risk.	➡ Standards that have been certified, evaluated, qualified, registered or verified by independent nationally recognized and industry sponsored organizations (e.g., Standards Council of Canada) can be specified in the bid documents.
	➡ Policies on evaluation methods for dissimilar products can be specified (e.g., weighting system).

Risks to *Objectivity* (Cont'd)

Risks	How to maintain integrity and protect interests
When evaluating the bids	
...if bids are evaluated by a single department, then there is less likelihood of a variety of perspectives influencing the selection decision ➡	To mitigate these kinds of risks, consider a policy of using: – a selection committee of individuals from more than one department in the case of mid level contracts – from more than one department and council/local board in the case of higher value contracts.

Risks to *Fairness*

Risks	How to maintain integrity and protect interests
Generally	
...if persons who have recently left the employ of the municipality/local board are involved in the development of a proposal/bid to the municipality/local board, then there is risk to the perceived fairness of the procurement process. Similarly, if persons retained by the municipality/local board to assist in preparing the call for proposals/bids are subsequently involved in preparing a bid to respond to the request, risks can arise. ➡	A policy of restricting persons who have recently left the employ of the municipality/local board from using the information gained from such employment in doing business with the municipality/local board can help address this issue. As well, requiring bidders to disclose whether they employ any such person can to reduce these risks. Disclosing the names of any other persons who may have been involved in developing the call for proposals/bids who are engaged by the proponent/bidder can also address these risks.
...if it is unclear how the municipality/local board intends to promote competition for low value, infrequent procurement, then there are risks to the fairness of the process. ➡	A policy of specifying how many verbal or written quotes will be sought for low value purchases can help address this risk.
When monitoring performance and addressing poor performance of suppliers	
...if there are no policies in place on how disputes over performance are to be resolved, then there is a risk that whatever mechanism is used will be perceived as arbitrary. ➡	A policy of identifying how disputes over performance are to be resolved can address this risk.

Risks to *Fairness* (Cont'd)

Risks	How to maintain integrity and protect interests
When preparing the bid documents	
...if it is unclear what the required format is for submitting bids, then fairness concerns can arise in the way the bids are evaluated.	Policies about the required format for the bids can address this risk.
When evaluating the bids	
... if there are no clear policies in place on how to respond to unsuccessful bidders' requests for information about how they might improve their chances of success next time, then there is a risk that the process will be perceived as unfair.	A policy about how these types of requests will be responded to can minimize risks here.
...if there are no clear policies in place about what to do if bids received exceed budget, are not responsive to the business needs or do not represent fair market value, then proceeding in the absence of such policies could be viewed as unfair.	Policies that address how the municipality/local board will respond to these scenarios can help ensure fairness (e.g., by undertaking a revised solicitation).
...if there are no clear policies in place about what to do in the event that two equal bids are received, then there is a risk that proceeding in the absence of such policies could be viewed as unfair.	Policies that guide the municipality/local board in "breaking a tie" can avoid perceptions of unfairness. Considerations here could include selecting the bidder that offers prompt payment discounts, the best delivery date (if timeliness is a factor), best record for after sales service and best overall performance record.

Risks to *Fairness* (Cont'd)

Risks	How to maintain integrity and protect interests
When evaluating the bids	
...if there are no clear policies in place about how irregularities in bids will be dealt with, then there is a risk that action taken will be viewed as unfair. ➡	Policies on irregularities can help address these issues. Fairness can be promoted by being clear about what types of irregularities will: – automatically disqualify a bid (e.g., late bids, unsealed bids) – disqualify a bid unless the irregularity is trivial or insignificant (e.g., bids that are incomplete, qualified or provide insufficient financial security) – result in the bidder being offered a short time period to rectify the bid to enable it to be considered (e.g., bids missing the signature of the bidder, or containing minor clerical or mathematical errors).

Risks to *Openness and Transparency*

Risks	How to maintain integrity and protect interests
Generally	
... if it is unclear how potential bidders can access information about the municipality's/local board's procurement process, bid opportunities and how to effectively participate in the procurement process, then there can be risks to the openness and transparency of the process.	➡ Policies about how potential suppliers will be informed of the policies and procedures, bid opportunities and how to participate in the process can reduce this risk.
When preparing the bid documents	
...if the method of notifying potential suppliers of procurement opportunities is unclear, then openness (and fairness) is put at risk.	➡ Policies should be in place on how suppliers will be notified of opportunities. Note there are special requirements about notice involving procurements affected by the trade agreements. These are discussed in Appendix 4.
When determining the scope of work	
...if products requested are too specific (e.g., refer to a brand name), then this can limit potential suppliers.	➡ A policy of using generic specifications in defining work/business needs can address this risk.
When evaluating the bids	
...if final rating results with supporting documents are not kept available for internal inspection, then how a decision was arrived at may not be transparent to senior management, council or an auditor.	➡ A policy of keeping final rating results and supporting documentation available for internal inspection can reduce this risk. (See also records retention policy discussion under Risks to Accountability.)

Risks to *Openness and Transparency* (Cont'd)

Risks	How to maintain integrity and protect interests
When evaluating the bids	
...if there is a reasonable likelihood that on completion of a contract, a follow-up contract will be necessary and this is not made clear at the outset, there is a risk to the transparency of the procurement process.	A policy of ensuring that the original bid solicitation makes clear that a follow-up contract could be necessary can reduce this risk.

Risks to *Accountability*

Risks	How to maintain integrity and protect interests
Generally	
...if the circumstances where contracts are not to be approved by the council/local board are unclear, then there are risks to accountability (and efficiency).	➡ In developing policies consider what the circumstances would be for delegating to a staff member council's authority to approve contracts (e.g., the dollar thresholds below which council approval will not be required). ➡ As well, consider having the council/local board provide approval in circumstances like the following: – the contract requires Ontario Municipal Board approval – the cost amount proposed for acceptance is higher than the budget approved by the council or the local board and the necessary re-allocations within budget cannot be made – a substantive objection has been raised by a bidder in the procurement process about a procurement of significant value – a major irregularity precludes the award to the vendor submitting the lowest bid – the officials involved in the procurement believe it in the best interests of the municipality/local board (e.g., a small dollar amount for an item of significant public profile) – an exception to the procurement policy, is sought based on a business case.

Risks to *Accountability* (Cont'd)

Risks	How to maintain integrity and protect interests
Generally	
...if there is no regular, timely reporting to the council/local board on procurements that exceed a significant dollar threshold, (but are still within an official's authority) or that are to the same supplier and cumulatively exceed a certain dollar threshold, then there can be risks to accountability.	➡ A policy of establishing thresholds for these situations and regular, timely reporting to the council/local board on procurements that exceed these thresholds can help ensure accountability.
...if it is unclear which staff will have responsibility where the procurement has corporate-wide application or applies to two or more departments of the municipality/local board, then accountability can become confused.	➡ A policy of specifying how responsibility will be determined in the case of corporate-wide or multi-department procurements can help address this risk.
...if it is unclear what the spending/signing authority is for each level of management or type of position, then accountability is at risk.	➡ Specify the dollar threshold for spending authority of each level of management or type of position within the organization.
...if there is no regular reporting to council/local board on non-competitive procurements of significant dollar amounts (where the procurement decision has been delegated to staff) and the rationale for such action, then accountability can be at risk.	➡ A policy of regularly reporting to the council/local board on significant dollar value procurements that were not subject to a competitive process (with supporting rationale) can help address this risk. See Table 3a and the discussion of the circumstances for non-competitive procurement.

Risks to *Accountability* (Cont'd)

Risks	How to maintain integrity and protect interests
Throughout the procurement process	
...if it is unclear who is responsible for moving the procurement through each step of the process, then there is risk that no one will be accountable for procuring the goods or services.	A policy that states clearly the staff position, program area and council/local board responsibilities for each step of the procurement process can help address this risk.
...if it is unclear how, where and who is to keep records for each step of the procurement process, then there is a risk to the accountability of the process.	A records retention policy that addresses procurement records can minimize this risk.
...if contracts are renewed without the procuring official reporting on why a renewal is in the best interests of the municipality/local board, then there is a risk to accountability.	A policy of requiring such reports and comment on the continued need for the good or service, the market situation and trend for the goods or services affected assists to address concerns about accountability.
...if contract amendments or terminations are made without adequate oversight by the responsible level of authority, then there is a risk to accountability.	Procurement policies should make clear the conditions where amendments, revisions, change orders, and terminations may be made and who is authorized to make these types of changes. A policy of requiring that amendments be authorized by the next highest level of management (from the level that authorized the original procurement) can address this risk.

Risks to *Efficiency*

Risks	How to maintain integrity and protect interests
Generally	
...if distinctions are not made between the process and rules applicable to small purchases vs. large and routine vs. sensitive procurement, then there is risk that transaction costs of the procurement will be disproportionate to the benefits received/risks mitigated by the process.	A policy of distinguishing what rules will apply based on the materiality of the purchase and the sensitivity (e.g., low dollar value but high sensitivity or profile) can help address this risk.
When determining the scope of work	
...if a scope of work is too broad, then there is a risk of inefficiency in the later stages of procurement as the proposals cannot be easily evaluated (e.g., too complex or lengthy) and contracts cannot be easily developed to implement them.	A policy of using a multi-step procedure including a pre-qualification stage to ensure the workload is manageable can help address this risk.

6. FORMULATING POLICIES ABOUT REVIEWING AND EVALUATING THE EFFECTIVENESS OF THE PROCUREMENT PROCESSES

This chapter will help you fulfil the requirements of section 271(1)(h) of the *Municipal Act, 2001*, S.O. 2001 Chapter 25.

Section 271 requires for municipalities and local boards to have policies in place about how and when the procurement processes will be reviewed to evaluate their effectiveness.

This section of the guide is meant to "close the loop" on developing procurement policies. If you have followed the advice in the earlier parts of the guide, then you will have essentially completed a review of your municipality's/local board's procurement policies.

> The purpose of this section is to offer guidance on **what to consider in developing policies** about how and when the procurement processes will be reviewed and evaluated, not how to undertake and complete a review and evaluation.

A key question to ask in developing the review and evaluation policy is 'what does your municipality/local board need to put in place to determine if it is meeting its policy goals?'

One starting point is to put some clear measures of policy success in place against which performance can be assessed (such assessment could take place as frequently as once or twice a year). Chapter 3 and Appendix 3 detail methods of measuring policy goals. Thresholds for variances from performance targets can be established and reviewed to identify root causes of performance that slips below these thresholds.

An alternative is a policy of reviewing and evaluating on a less formal basis. This could be in response to concerns of council/local board, internal clients of the municipality/local board, suppliers, the public and external or internal auditors. Some municipalities have a cross-department standing committee that works with the purchasing department to identify improvement

opportunities. Some, as noted earlier, meet with the supplier community regularly - every six months or 12 months – to discuss how they can improve procedures.

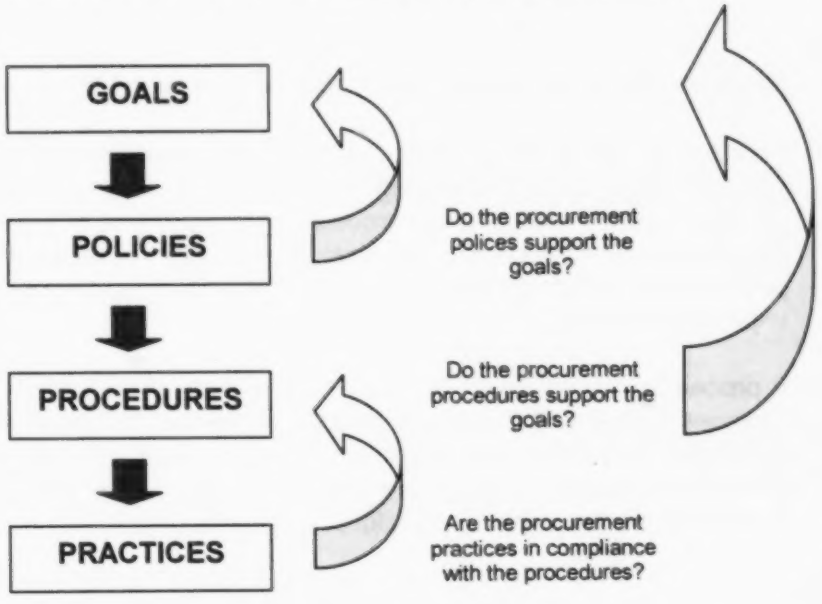
A policy of regularly reviewing the processes at least once every five years, regardless of performance, is also an option. The frequency of review is dependent on the complexity and volume of procurement activity and the strength of the internal controls. Any combination of review and evaluation methods is available.

Before beginning a review and evaluation of whether the policy goals are being met, you may want to consider whether the right goals are in place for the procurement policies. This type of review should be done as part of formulating the policies required by the new legislation. The guide suggests certain goals to build these policies, but each council/local board should assess whether these are the appropriate goals for them.

Once performance issues have been identified and determined to be significant, the next step is to determine *why* the goals are not being achieved.

There are three areas of inquiry that can be pursued and built into the review and evaluation policy:

- Do the procurement policies lead to the goals?
- Do the procurement procedures support the goals?
- Are procurement practices in compliance with your procedures?



Are the right policies in place to realize your goals?

The concern at this stage is that no policy is in place to address the goal or that the policy is unclear and hence may be contributing to the performance issue. A risk assessment, of the type described in Chapter 5, can assist in determining whether the goal is at risk and will result in poor performance.

Instead of a risk assessment, you may choose a different approach or combination of approaches to review the policies. First, you can compare your municipal/local board policies against other organizations. The second option is to use a program logic model where you examine whether each policy can logically be expected to lead to the goal. This type of review should not occur frequently. The costs and time of the review and the need for certainty by the players in the process about the "rules of the game" mean the reviews should be limited to once every few years.

The municipality/local board should allow a policy to be in place for at least one year before it is reviewed. Of course, if significant problems with the policies are uncovered in the interim, they should be addressed immediately. Initial problems may be due to factors other than the soundness of the policies. These factors include the following:

- the absence of clear information, training and education (and, in some instances, marketing) on the policies
- inadequate or immature support structures to support the policies
- disparities between the policies and their implementation.

Are the right procedures in place to support your goals?

This type of review would assess the procedures to determine barriers to achieving the goals. Depending on the scope of the performance problem, you may want to focus on the procedures used in one of the five key steps of the procurement process. This strategy will help you determine where the performance problems may be rooted and what opportunities for improvement exist.

A procedure review could occur more frequently than a policy review as the changes do not affect as many people. However, the reviews can involve significant resources and be disruptive to suppliers and staff and should not occur more than once every few years. If significant problems are uncovered in the interim, they should be addressed immediately.

Are your practices in compliance with your procedures?

Procedures may in fact be sound and efficient. However, if they are not being followed, the result can be performance that is not meeting expectations. Underlying this type of problem could be factors such as the incentive system, confusion over roles, poorly communicated or constantly changing procedures or conflicting priorities.

(Note also that practices may very well develop that are not in compliance with the procedures because the procedures themselves are not serving the policy goals. Learning from a review of practices can serve as an important feedback loop to correct procedure problems – the review type two explained above.)

A review of practices against procedures typically takes the form of a compliance audit. Such an audit is not usually part of the regular annual audit of the financial statements. (In the latter, a few transactions may be audited, which would include following the transactions through the procurement process in order to form an opinion about whether the internal controls are such that the numbers in the financial statements can generally be relied upon. However, this type of audit is not aimed at reviewing the practices to check for compliance with the procedures.)

A compliance audit would generally be done once every one or two years, or again, in response to an issue.

7. WHAT ARE YOUR VIEWS ON THE GUIDE?

This client satisfaction survey is intended to provide the Ministry of Municipal Affairs and Housing (MAH) with information that will assist us in better serving your needs. The information collected in this survey will be used by MAH to better understand your needs and help us make improvements to help you develop procurement by-laws under the requirements of section 271 of the *Municipal Act, 2001*, S.O. 2001, Chapter 25.

Instructions

This survey asks a number of questions about your experience with the guide. These include questions about the guide's usefulness, comprehensiveness and accessibility. The survey can be completed either by filling out the attached questionnaire or by completing the on-line questionnaire. You can access the on-line questionnaire, electronically, by going to www.mah.gov.on.ca and clicking on the procurement guide link.

Completed surveys (hard copy versions only) can be faxed or mailed to MAH:

Ministry of Municipal Affairs and Housing
Municipal Performance and Accountability Branch
13th Floor
777 Bay Street
Toronto, ON M5G 2E5
Fax: (416) 585-6161

If you have any questions about this survey and the use of this information, please contact us at (416) 585-6022.

Thank you for your participation.

For the following, please (circle) the response that *best* describes your experience in these areas.

1 = very dissatisfied
2 = dissatisfied
3 = neutral
4 = satisfied
5 = very satisfied
N/A = not applicable

1. Please rate your OVERALL satisfaction with the guide

very dissatisfied	dissatisfied	neutral	satisfied	very satisfied	not applicable
1	2	3	4	5	N/A

2. Please rate your level of satisfaction with the following aspects of the guide:

a. As a primary resource to help you develop bylaws/resolutions as required by the legislation

1 2 3 4 5 N/A

b. Clear discussion of the topics for helping you to develop your procurement bylaw/resolution

1 2 3 4 5 N/A

c. The range of topics addressed in the guide

1 2 3 4 5 N/A

d. Easy-to-understand language

1 2 3 4 5 N/A

e. The organization of the guide (i.e., information is organized in a logical manner)

1 2 3 4 5 N/A

f. The level of detail provided in the guide

1 2 3 4 5 N/A

g. Accessibility of guide (electronically or otherwise)

1 2 3 4 5 N/A

3. **Has your municipality/local board drafted a bylaw/resolution under the requirements of section 271 of the *Municipal Act, 2001*?**

YES **NO**

4. **What is your position in your municipality/local board?**

Council/local board member
Municipal treasurer
Municipal clerk
Other municipal staff
Purchasing manager
Please specify _____

5. **What is the population of your municipality?**

<5,000 5,000 – 24,999 25,000 – 100,000 >100,000

6. **Aside from the guide, what are your other preferred resources on procurement?**

7. **What chapters in the guide were the most useful to you?**

8. **What topics in the guide were the most useful to you?**

9. **Is there any information you feel should be added to the guide?**

10. **Please provide any other comments you have about the guide. Feel free to elaborate on questions from the survey or any other thoughts you wish to convey relating to the guide.**

APPENDIX 1: GLOSSARY

For the purpose of the guide, the following terms are defined as set out in the manner below.

Bidders List - A list of names and addresses of vendors from whom bids, proposals and quotations might be expected. The list, which is maintained by the purchasing official, should include all vendors who have expressed interest in doing business with the municipality/local board.

In-House Bids - A process that allows for internal staff to compete with external entities for procurement opportunities.

Interprovincial Trade Agreement - A bi-lateral or multi-lateral agreement entered into by governments (federal, provincial, territorial) governing specific aspects of inter-jurisdictional trade. The intent of these agreements is to reduce barriers to the free movement of persons, goods and services and to establish open, efficient markets between signatory governments. For more information on the interprovincial agreements applicable to Ontario procurement, see Appendix 4.

Net Present Value - The net present value (NPV) is the discounted value of expected future cash inflows and outflows. NPV accounts for the time value of money, considering cost of capital, interest rates and investment opportunity costs. It represents the net result of a multi-year investment expressed in current dollars.

Non-Competitive Procurement - Acquisition of goods and services without comparing pricing or product/service information from multiple vendors.

Policies - Matters that council has adopted by bylaw or that the local board has adopted by resolution.

Practices - The actual activities undertaken in the procurement process.

Procedures - A sequence of steps or actions establishing expectations of how the policies are to be implemented.

Procurement - For the purposes of this guide "procurement" is defined as:

A goods, services or construction contract involving a purchasing, leasing, renting or exchange transaction, arrived at by a competitive or non-competitive process. Procurement also includes material(s) management, contract management, advisory services and implementation and adherence to best practices.

This definition, developed by the procurement working group members, is provided strictly to give context for the material discussed in the guide. Ultimately, the definition of procurement is an issue for each municipality/local board to address in its procurement policy since section 271 of the *Municipal Act, 2001* requires municipalities/local boards to develop policies on the types of procurement that will be used.

Request for Expressions of Interest - A general market research tool to determine vendor interest in a proposed procurement. It is used prior to issuing a call for bids or proposals and is not intended to result in the award of a contract.

Request for Information - A general market research tool used to determine what products and services are available, scope out business requirements and/or estimate project costs. A Request for Information is used to provide vendors with a general or preliminary description of a problem or need and to request vendors to provide information or advice about how to better define the problem or need, or alternative solutions. It should not be used to pre-qualify or screen vendors. It is not intended to result in the award of a contract.

Request for Pre-Qualification - A procurement process used to pre-qualify vendors for subsequent participation in an invitational Request for Proposal. Responses from proponents are evaluated against selection criteria set out in the solicitation, and a short-list of pre-qualified proponents is created.

Request for Proposal - A competitive procurement process for obtaining unique proposals designed to meet broad outcomes to a complex problem or need for which there is no clear or single solution.

Request for Tender - A competitive procurement process for obtaining competitive bids based on precisely defined requirements for which a clear or single solution exists.

Risk Management - A systematic approach to setting the best course of action under uncertainty by identifying, assessing, understanding, acting on, monitoring and communicating risk issues.

Single Sourcing - The procurement of a good or service from a particular vendor rather than through the solicitation of bids from other vendors who can provide the same item.

Sole Sourcing - The procurement of a good or service that is unique to a particular vendor and cannot be obtained from another source.

Two-Envelope - A procurement process in which a bid is submitted into two envelopes. The technical and qualitative information are submitted in the first envelope and the price information is provided in the second envelope. The second envelope is opened only if the first envelope shows the bidder to be qualified.

Vendor of Record - A procurement process where the municipality/local board seeks out bids or proposals from a select group of vendors with which it has already established a satisfactory business relationship. A Vendor of Record (VOR) may be used either directly to procure goods and services – that is without further competition – or it may be used indirectly as the basis for inviting proposals, tenders or bids from suppliers.

APPENDIX 2: HELPFUL RESOURCES

The following resources are grouped into two categories: Web sites and books. These have been provided to help municipalities find information on procurement. The Ministry does not control the content of the Web sites and books and is not responsible for any damages arising out of their use.

WEB SITES

Ontario Public Buyers' Association

http://www.vaxxine.com/opba/

The mandate of the Ontario Public Buyers' Association (OPBA) promotes ethical and effective expenditure of public funds through the principles of public procurement. OPBA offers a databank of sample specifications for tenders, quotations, RFPs and other bid documents, an Internet bid document advertising service, a news group and distance learning opportunities.

Purchasing Management Association of Canada

http://www.pmac.ca

The Purchasing Management Association of Canada (PMAG) is a national, non-profit association and training agency for procurement and supply chain professionals in Canada. The Web site has links to other purchasing associations.

National Institute of Government Purchasing

http://www.nigp.org/

The National Institute of Government Purchasing (NIGP) is an organization offering publication, education and certification programs and consulting services for public procurement professionals. *The Procurement Professional*, a trade journal, can be accessed through this site.

A searchable Internet-based Procurement Information Exchange library allows for research and downloading of sample solicitations, product/service descriptions, policy and procedures manuals and position descriptions. This automated library is backed up by a traditional library of over 30,000 documents on public purchasing. The procurement support staff can answer questions and provide sample documents on most purchasing issues. This service is available to NIGP members only.

NIGP also has an on-site training program for governments that have funds available for staff development but not for travel costs. Information on this program can be obtained by e-mailing NIGP at: education@nigp.org.

Canadian Public Procurement Council

http://www.ccmp-cppc.qc.ca/ccmp/index.html

The mandate of the Canadian Public Procurement Council (CPPC) supports the public procurement community across Canada by promoting dialogue, facilitating information exchange, developing approaches to common issues and providing leadership for the resolution of shared problems.

Canadian Association of University Business Officers

http://www.caubo.ca/

The mandate of the Canadian Association of University Business Officers (CAUBO) promotes professional and effective management of the administrative, financial and business affairs of higher education. Through publications, educational programs and a forum for the interchanging of ideas, CAUBO tries to enhance the professional standards of its members.

The National Procurement Committee (NPC) of CAUBO promotes and ensures the exchange of information on procurement activities at the national, regional and institutional levels in such areas as the following:

- contracting at the national level and, where appropriate, co-ordination of regional activities
- government relations (e.g. regarding the Agreement on Internal Trade)
- forming a national information bank, coordinating an information exchange, and networking
- coordinating price benchmarking
- identification of best practices and expertise
- organizing seminars and conference activities.

Universal Public Purchasing Certification Council (UPPCC)

http://www.nigp.org/press/UPPCCFees.htm

The Universal Public Purchasing Certification Council (UPPCC) is an organization composed of NIGP and National Association of State Procurement Officials (NASPO) members. UPPCC's mandate establishes, monitors and revises requirements for the Certified Professional Public Buyer (CPPB) and Certified Public Purchasing Officer (CPPO) professional designation programs. Training courses are offered.

Ontario University Purchasing Management Association

http://www.oupma.on.ca/

The Ontario University Purchasing Management Association (OUPMA) promotes co-operative procurement and exchange of information among its members and affiliates. OUPMA conducts research and provides education on purchasing best practices, legislation and technology.

BOOKS

O' Connor, M., et al. (1999). *Conduct Handbook for Municipal Employees and Officials.* Toronto: Butterworths Canada Ltd.

This book provides civic employees and officials with a guide to identifying and addressing conduct issues in the municipal workplace. It offers examples of inappropriate employee activities and discusses the consequences of such misconduct. Drawing from these examples, the book describes the policies local agencies should have in place to avoid adverse publicity or costly litigation arising from improper or illicit behaviour. Tips are also offered on how to handle some commonplace situations such as receipt of holiday gratuities.

A model Code of Conduct is included for use as a template by employers. Training and enforcement concerns, when a code is instituted, are also discussed. Chapters that focus on problems provide precedents or suggestions for dealing with them. Some issues covered include abuse and corruption, disclosure of interest, gifts and benefits, political activity, moonlighting, nepotism and post-service employment.

McGuinness, K et al. (2002). *Municipal Procurement Handbook.* Markham: Butterworths.

This book offers procurement officers, city financial managers, city councillors and others involved with municipal purchasing a guide on best practices. The book outlines how municipalities can develop a strategic and efficient procurement process with a commitment to corporate governance while minimizing their liability risks. It covers traditional and modern purchasing methods, risk management, and step-by-step guidance on bidding and tendering processes.

Pilachowski, M. (1996). *Purchasing Performance Measurements: A Roadmap for Excellence.* West Palm Beach: PT Publications, Inc.

This book discusses why and how to implement performance measures, what to measure, why and how to understand the relationships between measurement and Just-In-Time/Total Quality Control and how to gain management support.

Fearon, L. and Johnson, F. (2002). *Purchasing and Supply Management, 12th ed.* New York: McGraw-Hill.

This book discusses major supply challenges facing all organizations and their purchasing and supply management implications. It also covers basic tools and techniques of purchasing and supply management and poses questions to readers to test their comprehension of the material discussed.

Herman, J. et al. (1987). *Evaluator's Handbook.* Los Angeles: Sage Publications.

This book discusses program development and the procedures for conducting formative and summative evaluations. It also provides guides for a formative evaluation, a standard summative evaluation and a small experiment.

APPENDIX 3: PERFORMANCE MEASURES FOR THE PROCUREMENT PROCESS

Below are the key goals for procurement as outlined in Chapter 3. Under each goal are suggested performance measures. **These are only suggestions and municipalities/local boards are not obligated to establish performance measures for procurement.**

Effectiveness - the extent to which the procurement process is achieving its intended results* (i.e., the process delivered the goods and services required to meet the municipality's/local board's needs):

- level of supplier satisfaction with the procurement process
- number of complaints** received from prospective and actual bidders
- ratio of number of annual change orders to total number of annual orders
- ratio of number of requisitions filled to number of requisitions initiated
- ratio of number of awards challenged to number of awards made
- ratio of number of suppliers canvassed per bid to number of suppliers who submitted bids (in invitational bid process for medium to large procurement)
- ratio of number of times that a bid call did not result in bid award to number of bid calls
- average time needed to move through the procurement process
- number of requisitions turned around under five days, under 10 days.

Objectivity - approaching the procurement of goods and services in an unbiased way, that is, not influenced by personal preferences, prejudices, or interpretations:

- ratio of number of complaints about objectivity to number of bid calls.

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* The results here are the "substantive" or quality results, as opposed to process results. Process results are the types of results that are described in the bolded goals below.

** The Ministry's Municipal Performance Measurement Program defines complaint as: "When a municipality's determined level of service was not met."

Fairness - applying the policies equally to all bidders:

- ratio of number of complaints about fairness to number of bid calls.

Openness and Transparency - clarity and disclosure about the process for arriving at procurement decisions:
Suppliers' satisfaction with the following:

- access to procurement opportunities
- clarity of bid documents and selection criteria
- communication and explanation of bid decisions.

Accountability - the obligation to answer for procurement results and for the manner in which procurement responsibilities are discharged:

- councillors' and senior management's satisfaction with clarity, timeliness, relevance, and frequency of variance reports about the procurement process
- ratio of number of contract renewals where no rationale provided to total number of contract renewals.

Efficiency - the quality, cost and amount of goods and services procured as compared to the time, money and effort to procure them:

- ratio of number of purchase orders issued to number of procurements initiated
- percentage of reconciliations completed within 30 days.

APPENDIX 4: INTERPROVINCIAL TRADE AGREEMENTS ON PROCUREMENT APPLICATION TO MUNICIPALITIES IN ONTARIO

The following trade agreement summary has been provided for information purposes only. It should not be relied on as a substitute for legal or professional advice. The Ministry is not responsible for any damages arising from a municipality or local board relying on this summary. Municipalities and local boards are urged to consult the full text of the interprovincial trade agreements.

To obtain full text copies of the MASH Annex to the Agreement on Internal Trade and the Agreement on the Opening of Public Procurement for Ontario and Quebec, refer to the Web site of the Management Board Secretariat, Office of the Corporate Chief Information Officer, Procurement Policy and IT Procurement Branch at www.ppitpb.gov.on.ca.

The Agreement on Internal Trade (AIT) came into effect on July 1, 1995 and is designed to eliminate barriers to trade, investment and mobility within Canada. Annex 502.4 (the MASH Annex) of the AIT came into effect on July 1, 1999. Under its terms the MASH Annex, applies in all Canadian jurisdictions except the Yukon Territories and governs procurement for "MASH entities." MASH entities consist of:

- municipalities
- municipal organizations
- school boards
- publicly-funded academic, health and social service entities.

The Agreement on the Opening of Public Procurement for Ontario and Quebec covers MASH sector procurement between Ontario and Quebec. It came into effect for construction procurement in July 1995 and for goods and services procurement in May 1997.

Purpose of the agreements

The agreements are designed to:

- promote inter-provincial trade
- eliminate barriers to trade
- ensure that suppliers are treated fairly when competing for procurement opportunities regardless of their geographic location.

Principles of the agreements

The agreements are founded on the principles of reciprocal non-discrimination and transparency:

Reciprocal non-discrimination. The agreements require that:

- suppliers from provinces outside Ontario are to be treated the same way as suppliers from Ontario
- restrictions based on the origin of goods and services or on the location of a supplier, contractor or sub-contractor are prohibited
- tendering is to be based on the highest degree of competition, efficiency and effectiveness
- biased tendering policies or procedures such as price preference for local suppliers or local content are prohibited.

Transparency. The agreements require that:

- policies and procedures governing procurement are to be clear and readily accessible to suppliers upon request
- tendering documents are to disclose certain information to prospective suppliers.

Dollar thresholds

By their terms, each agreement applies when you acquire goods or services at above the following dollar thresholds:

Agreement	Estimated Value of Goods or Services Procurement	Estimated Value of Construction Procurement
MASH Annex of the AIT	≥ $100,000	≥ $250,000
The Agreement on the Opening of Public Procurement for Ontario and Quebec	≥ $100,000	≥ $100,000

Advertising procurement opportunities

For goods and services procurement estimated at $100,000 or more and construction procurement estimated at $250,000 or more, the agreements provide that MASH entities are required to use an electronic advertising/tendering system providing equal access to potential vendors across the country. Other methods of advertising may be used in addition to an electronic system.

For construction procurements estimated between $100,000 and $250,000, the agreements require that at least one of the following methods is to be used:

- an electronic advertising/tendering system providing equal access to potential vendors across the country
- a daily newspaper (e.g. local newspaper) designated by the MASH entity; or
- supplier lists, provided that the pre-qualification process is fair and open and allows other suppliers to qualify on an annual basis or each time if the qualification is for a specific project.

Under the agreements, procurement opportunities must be advertised for a minimum of 15 calendar days, irrespective of the advertising method used.

Under the agreements, a MASH entity may use any internet based electronic advertising/tendering system providing equal access to potential vendors across the country.

The MERX system is currently used by federal and some provincial governments to advertise procurements.

What information to include in the tender notice

The agreements require a tender notice to contain at least the following information:

- a brief description of the procurement contemplated
- the place where a person may obtain information and tender documents
- the conditions for obtaining the tender documents
- the place where the tenders are to be sent
- the closing date and time for tender submissions
- the time and place of the opening of the tenders in the event of a public opening
- a statement that the procurement is subject to the MASH Annex.

Exceptions to the interprovincial trade agreements

The agreements provide for certain circumstances where you are not required to follow the agreements. In the following list, the exceptions to the trade agreements have been summarized and re-organized under topical headings for greater clarity. This information has been presented in this form for ease of use only. **It should not be relied on as a substitute for legal or professional advice. The Ministry is not responsible for any damages arising from a municipality or local board relying on this summary. MASH entities are urged to consult the full text of the agreements.** For a precise description of these exceptions, see Sections "I" and "L" and Appendices "C" and "D" of the MASH Annex, or "Section 5" and Appendices "A", "B", and "E" of the Agreement on the Opening of Public Procurement for Ontario and Quebec.

You may exclude a procurement from certain or all requirements of the agreements (as provided for in the agreements) in the following instances:

Emergency, Protection, and Security Concerns

- where an unforeseeable situation of urgency exists and the goods or services cannot be obtained in time through a competitive process
- where goods or consulting services regarding matters of a confidential nature are to be purchased and the disclosure of those matters through an open competitive process would compromise government confidentiality, cause economic disruption, or otherwise be contrary to the public interest
- where competitive sourcing would compromise the ability to maintain security or order or to protect human, animal (MASH Annex only), or plant (MASH Annex only) life or health
- where the procurement is for health services or social services (MASH Annex only)

Special Financing Arrangements

- where a contract is to be awarded under a cooperation agreement that is financed by an international cooperation organization, only to the extent that such agreement includes different rules for awarding contracts
- where the procurement is for goods or services that are financed primarily from donations that are subject to conditions that are inconsistent with the trade agreement (MASH Annex only)

Interprovincial and Geographic Limitations

- where the procurement is for goods that are subject to interprovincial movement that is restricted by laws not inconsistent with the trade agreement (MASH Annex only)
- where it can be demonstrated that transportation costs or technical considerations impose geographic limits on the available supply base of sand, stone, gravel, asphalt, compound and pre-mixed concrete that need to be purchased for road construction or repair

Warranties/Guarantees, Exclusive Rights, and Lease Arrangements

- where it is necessary to ensure compatibility with existing products, recognize exclusive rights such as copyrights, patents, or exclusive licences, or maintain specialized products that must be maintained by the manufacturer or its representative
- where the carrying out of work by a contractor other than the contractor who did the original work would nullify the warranty or guarantee held

- where construction or renovation work on a leased building may be performed only by the lessor of the building
- where the purchase of goods is already covered by a lease-purchase agreement where payments are partially or totally credited to the purchase (The Agreement on the Opening of Public Procurement for Ontario and Quebec)

Sole Suppliers and Licensed Professionals

- where there is only one supplier available and no alternative or substitute exists
- where there is a statutory monopoly on the product or service
- where the products or services can be provided only by the following licensed professionals: medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, chartered accountants, lawyers, and notaries

Public Agencies, Special Interest Groups, and Aboriginal Peoples

- where use of a central service is mandatory
- where the procurement is between public organizations or with a non-profit organization
- where the goods or services are purchased from philanthropic institutions (MASH Annex only), prison labour, or persons with disabilities
- where a procurement is made pursuant to an agreement with or a policy concerning Aboriginal Peoples

Miscellaneous Circumstances

- where goods or services are purchased on behalf of an entity not covered by the trade agreement
- where no bids were received in a competitive process
- where the procurement of goods is intended for resale to the public
- where the purchase of goods or services is related to cultural or artistic fields, as well as computer software (MASH Annex only) for educational purposes
- where the procurement is for original works of art (MASH Annex only)
- where goods are purchased under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases
- where the procurement involves research and development or production of a prototype or original concept and subsequent purchase of these products or services is to be made through a competitive process

- where the procurement is for the services of financial analysts or the management of financial assets by organizations who have such functions as a primary purpose (MASH Annex only)
- where the procurement is for financial services respecting the management of financial assets and liabilities (i.e. treasury operations), including ancillary advisory and information services, whether or not delivered by a financial institution (MASH Annex only)
- where a contract is to be awarded to the winner of a design contest (MASH Annex only)
- where goods are purchased on a commodity market
- where the procurement is for subscriptions to newspapers magazines, or other periodicals (MASH Annex only)
- where the procurement is for real property (MASH Annex only)

Conflict between interprovincal trade agreements

The agreements provide that in the event of any inconsistency between the Agreement on the Opening of Public Procurement for Ontario and Quebec, the MASH Annex or any additional agreements entered into by those provinces or territories which are signatories to the agreement, the agreement that is more conducive to trade liberalization prevails to the extent of the inconsistency.

APPENDIX 5: THE "TWO-ENVELOPE" PROCUREMENT PROCESS

The two-envelope approach is used when the purchaser wants to evaluate the technical and qualitative information of a given proposal without being influenced by prior knowledge of the corresponding pricing information. Proposal evaluation is done usually by a team of staff from possibly more than one department who have relevant expertise for making the evaluation.

In the two-envelope approach, each proponent must submit qualitative and technical information in a sealed envelope (envelope one) and pricing information in a second sealed envelope (envelope two). The contents of envelope one are evaluated and scored according to pre-determined criteria such as relevant firm experience, project team's qualifications/experience, personnel time allocation, understanding of scope of work, methodology/thoroughness of approach, quality and completeness of proposal submission, etc.

When the scoring of envelope one is completed, then the pre-determined process for moving to envelope two is followed. In some procurement strategies, a minimum score threshold is in place at envelope one, and only proposals which meet or exceed that threshold are eligible to proceed to the opening of envelope two and subsequent price evaluation. If a proposal is not eligible to proceed to price evaluation, the proponent is disqualified from further consideration and the second envelope is returned to the proponent unopened.

For each proposal where envelope two is opened, the bid price(s) are scored according to the pre-determined process. The particular procurement and evaluation strategy will dictate the process for scoring the price and subsequently taking the scores from the envelope one and envelope two processes into account, resulting in a total evaluated score for the proposal. The total evaluated scores are ranked, and the proposal with the highest ranked score is considered the successful proposal, unless council or the local board, as applicable, decides otherwise. In the event of a tie, the pre-determined process for handling a tie is followed.

APPENDIX 6: PROCUREMENT GUIDE WORKING GROUP MEMBERS

Name	Title	Organization
Marlene Knight	Consultant, City Service Review Project	City of Mississauga
Lou Pagano	Director of Purchasing	City of Toronto
Andrea Mindenhall	Manager, Purchasing	Regional Municipality of Halton
Janet Powers	Revenue, Purchasing, Tendering Clerk	City of Quinte West
Dawn Hipwell	Corporate Manager: Purchasing Fleet and Property	County of Simcoe
Troy Speck	Chief Administrative Officer	City of Elliot Lake
Melody Couvillon	Manager, Purchasing	City of London
Tim Sheffield	Chief Administrative Officer	City of North Bay
Minali Prem	Policy Analyst	Canadian Federation of Independent Business
Atul Sharma	Vice President, Policy Development	Ontario Chamber of Commerce
Diane Sirois	Senior Policy Advisor	Management Board Secretariat
John Bech-Hansen	Executive Director	Municipal Finance Officers Association of Ontario
Jeff Fisher	Senior Policy Advisor	Association of Municipalities of Ontario

FOR MORE INFORMATION

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MINISTRY OF NORTHERN DEVELOPMENT AND MINES

For local services boards, please contact your local office of the Ministry of Northern Development and Mines.

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